

IC 16-42-5**Chapter 5. Food: Sanitary Requirements for Food Establishments****IC 16-42-5-0.5****Local standards or penalties regarding food handling or food establishments precluded**

Sec. 0.5. Except as provided in this chapter, a corporation or local health department may not impose any:

- (1) sanitary standards on; or
- (2) locally prescribed monetary penalties for the violation of any state law or rule concerning; food handling or food establishments.

As added by P.L.266-2001, SEC.9.

IC 16-42-5-0.7**Local standards regarding food handling machinery precluded**

Sec. 0.7. (a) Except as provided in this chapter, a corporation or local health department may not impose any requirements or standards on the installation of food handling machinery in a food establishment regulated by this chapter.

(b) The installation of food handling machinery includes all activities associated with the machinery's installation, including the wiring, plumbing, air handling, and all other processes.

(c) This section does not limit the authority of the state fire marshal or other state agencies to regulate food establishments.

(d) This section does not limit the authority of a corporation or local health department to enforce requirements or standards established by state law or the state department for the installation of food handling machinery.

As added by P.L.266-2001, SEC.10. Amended by P.L.1-2006, SEC.306.

IC 16-42-5-0.9**Petitions for changes in rules**

Sec. 0.9. (a) A corporation or local health department may petition the state department requesting one (1) or more modifications or changes in the state department's rules concerning:

- (1) food handling machinery;
 - (2) sanitary standards for food handling or food establishments;
- or
- (3) civil penalties authorized under IC 16-42-5-28.

(b) Following the receipt of a petition described in subsection (a), the state department shall hold a public hearing concerning the corporation or local health department's requested modifications or changes and shall determine in writing whether to adopt rules under IC 4-22-2 to modify or change the state department's rules.

As added by P.L.266-2001, SEC.11.

IC 16-42-5-1 Repealed

(Repealed by P.L.266-2001, SEC.17.)

IC 16-42-5-2 Repealed

(Repealed by P.L.266-2001, SEC.17.)

IC 16-42-5-2.3

Food handling machinery defined

Sec. 2.3. As used in this chapter, "food handling machinery" means any of the following used for and in food handling:

- (1) Equipment.
- (2) Appliances.
- (3) Tools.
- (4) Plumbing and related fixtures.
- (5) Refrigeration devices.
- (6) Heating, ventilation, and cooling equipment.
- (7) Any other piece of equipment used for and in food handling.

As added by P.L.266-2001, SEC.12.

IC 16-42-5-3 Repealed

(Repealed by P.L.266-2001, SEC.17.)

IC 16-42-5-4

Sale of food by certain organizations; exemption from compliance

Sec. 4. (a) An organization that is:

- (1) organized for nonreligious or noneducational purposes;
- (2) exempt from the state gross retail tax under IC 6-2.5-5-21(b)(1)(B), IC 6-2.5-5-21(b)(1)(C), or IC 6-2.5-5-21(b)(1)(D); and
- (3) that offers food for sale to the final consumer at an event held for the benefit of the organization;

is exempt from complying with the requirements of this chapter that may be imposed upon the sale of food at that event if the events conducted by the organization under this section take place for not more than thirty (30) days in a calendar year.

(b) An organization:

- (1) that is organized for:
 - (A) religious; or
 - (B) educational purposes in a non-public educational setting;
- (2) that is exempt from the state gross retail tax under IC 6-2.5-5-21(b)(1)(B), IC 6-2.5-5-21(b)(1)(C), or IC 6-2.5-5-21(b)(1)(D); and
- (3) that offers food for sale to the final consumer at an event held for the benefit of the organization;

is exempt from complying with the requirements of this chapter that may be imposed upon the sale of food at that event unless the food is being provided in a restaurant or a cafeteria with an extensive menu of prepared foods.

(c) A restaurant or cafeteria setting described in subsection (b) does not include the following:

- (1) A pitch in.
- (2) A bake sale.
- (3) A fish fry, chili supper, spaghetti supper, or similar event

with a limited menu.

(4) Food prepared by a licensed retail food establishment.

(5) A concession stand.

(6) Heating or serving precooked foods.

(7) Preparing or serving a continental breakfast such as rolls, coffee, juice, milk, and cold cereal.

(8) Preparing or serving nonalcoholic or alcoholic beverages that are not potentially hazardous beverages or ice.

(9) Preparing or serving packaged or unpackaged foods that are not potentially hazardous foods, including elephant ears, funnel cakes, cotton candy, confectionaries, baked goods, popcorn, and chips and grinding coffee beans.

(10) Providing prepackaged food in the food's original package.

(d) This section does not prohibit an exempted organization from waiving the exemption and applying for a license under this chapter.

(e) It is recommended that an organization that is exempt under this section should still follow safe food handling practices.

(f) This section expires January 1, 2008.

As added by P.L.2-1993, SEC.25. Amended by P.L.192-2002(ss), SEC.159; P.L.138-2006, SEC.11.

IC 16-42-5-5

Rules

Sec. 5. The state department may adopt rules under IC 4-22-2 for the efficient enforcement of this chapter and to establish minimum sanitary standards for the operation of all food establishments.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-5.2

Variances from rules

Sec. 5.2. The state department may grant a variance from one (1) or more of the state rules concerning:

(1) food handling machinery; or

(2) sanitary standards for the operation of food establishments;

in accordance with IC 16-19-3-4.3.

As added by P.L.266-2001, SEC.13.

IC 16-42-5-6

Conditions of health and comfort

Sec. 6. A food establishment must meet the following conditions:

(1) Be adequately lighted, heated, drained, and ventilated.

(2) Be supplied with uncontaminated running water.

(3) Have adequate sanitary facilities.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-7

Construction to facilitate cleanliness

Sec. 7. Each food establishment and the machinery used in each food establishment must be constructed so as to be easily and thoroughly cleaned.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-8

Cleanliness and sanitation of premises and vehicles

Sec. 8. The floors, sidewalls, ceiling, furniture, receptacles, implements, and machinery of a food establishment and a vehicle used to transport food products must at all times be clean and sanitary.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-9

Walls and ceilings; construction; washing

Sec. 9. (a) The sidewalls, woodwork, and ceiling of a food establishment must be made of an impervious material with a finish that is washable.

(b) The sidewalls, woodwork, and ceiling must be kept washed clean with detergent and water.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-10

Floors; construction; washing

Sec. 10. (a) The floor of a food establishment must be made of nonabsorbent material that can be flushed with water.

(b) The floor of a food establishment must be kept washed clean with detergent and water.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-11

Domestic animals; rodents; insects

Sec. 11. A food establishment must be protected by all reasonable means against the presence of and entrance of domestic animals, rodents, flies, and other insects.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-12

Garbage removal

Sec. 12. Refuse, dirt, and waste products subject to decomposition and fermentation incident to food handling shall be removed daily from food establishments.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-13

Toilet room

Sec. 13. (a) A food establishment must have a convenient toilet room separate and apart from and not opening directly into a room that is used for food handling.

(b) The floor of the toilet room must be made of a nonabsorbent material.

(c) The floor of the toilet room shall be washed and scoured daily.

(d) Each toilet fixture and each toilet room must be adequately

ventilated.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-14

Washrooms

Sec. 14. (a) A food establishment must have a washroom adjacent to each toilet room.

(b) The washroom shall be supplied with adequate lavatories, soap, hot and cold running water, and clean individual towels.

(c) The washroom shall be kept clean by washing with detergent and water.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-15

Food handling rooms; exclusive use

Sec. 15. A room that is used for food handling or that is equipped for use for food handling may not be used for any other purpose.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-16

Dressing rooms

Sec. 16. (a) Rooms separate and apart from rooms used for food handling must be provided for the changing and hanging of wearing apparel.

(b) The rooms for changing and hanging wearing apparel must be kept clean.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-17

Expectorating

Sec. 17. A person may not expectorate in or on the machinery, equipment, floor, sidewalls, or other structure of a food establishment.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-18

Sleeping in food handling rooms

Sec. 18. A person may not live or sleep in a room used for food handling or in a room opening directly into a food establishment.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-19

Diseases; employees

Sec. 19. A person who has a communicable or infectious disease may not work in a food establishment in any capacity in which epidemiological evidence indicates the person may spread the disease.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-20

Wearing apparel; employees

Sec. 20. A person shall wear clean outer garments while working in a food establishment.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-21**Washing; employees**

Sec. 21. A person who works in a food establishment shall wash the person's hands and arms thoroughly with soap and clean water before beginning work, before resuming work after a rest period, and before resuming work after visiting a toilet room.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-22**Sitting or lying on food handling equipment**

Sec. 22. A person may not sit or lie upon equipment used or installed for use in handling food.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-23**Inspections**

Sec. 23. The state department may do the following:

- (1) Enter at any time a food establishment or place suspected of being a food establishment.
- (2) Inspect the premises, utensils, fixtures, equipment, furniture, and machinery used in food handling.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-24**Local health officers**

Sec. 24. (a) For the purpose of enforcing IC 16-41-20, IC 16-41-21, IC 16-41-23, IC 16-41-24, IC 16-41-34, or IC 16-42-5, the local health officers are food environmental health specialists subordinate to the state department.

(b) The state department shall provide to the local health officers who are food environmental health specialists guidelines concerning the interpretation of the state department's rules concerning food handling and food establishments so that enforcement of the state laws and rules is uniform throughout the state.

As added by P.L.2-1993, SEC.25. Amended by P.L.137-1996, SEC.72; P.L.144-1996, SEC.13; P.L.266-2001, SEC.14; P.L.104-2003, SEC.7.

IC 16-42-5-25**Prosecution of violators; orders to abate condition or violation**

Sec. 25. If, upon inspection of a food establishment, a local health officer or food environmental health specialist finds an employer, operator, or other employee to be violating IC 16-41-20, IC 16-41-21, IC 16-41-23, IC 16-41-24, IC 16-41-34, or IC 16-42-5, the local health officer or food environmental health specialist shall do at least

one (1) of the following:

(1) Furnish evidence of the violation to the prosecuting attorney of the county or circuit in which the violation occurs. The prosecuting attorney shall prosecute all persons violating IC 16-41-20, IC 16-41-21, IC 16-41-23, IC 16-41-24, IC 16-41-34, or IC 16-42-5, or rules adopted under those provisions.

(2) Report the condition and violation to the state health commissioner or the commissioner's legally authorized agent. The state health commissioner may issue an order to the person in authority at the offending establishment to abate the condition or violation within five (5) days or within another reasonable time required to abate the condition or violation. The proceedings to abate must be in accordance with IC 4-21.5.

As added by P.L.2-1993, SEC.25. Amended by P.L.137-1996, SEC.73; P.L.144-1996, SEC.14; P.L.104-2003, SEC.8.

IC 16-42-5-26

Noncompliance with order or requirement; offenses

Sec. 26. (a) A person who refuses to comply with a lawful order or requirement of the state health commissioner made in writing as provided in this chapter commits a Class B misdemeanor.

(b) Each day after the expiration of the time limit for abating unsanitary conditions and completing improvements to abate the conditions as ordered by the state health commissioner constitutes a separate offense.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-27

Violations of chapter; offenses

Sec. 27. (a) Except as otherwise provided, a person who recklessly violates or fails to comply with this chapter commits a Class B misdemeanor.

(b) Each day a violation continues constitutes a separate offense.

As added by P.L.2-1993, SEC.25.

IC 16-42-5-28

Civil penalties

Sec. 28. (a) The state department shall adopt rules under IC 4-22-2 establishing a schedule of civil penalties that may be imposed by the state department to enforce either of the following:

(1) This chapter.

(2) Rules adopted to implement this chapter.

(b) A penalty included in the schedule of civil penalties established under this section may not exceed one thousand dollars (\$1,000) for each violation per day.

(c) The civil penalties collected under this section shall be deposited in the state general fund.

(d) The state department may issue an order of compliance or impose a civil penalty included in the schedule of civil penalties

established under this section, or both, against a person who does any of the following:

(1) Fails to comply with this chapter or a rule adopted to implement this chapter.

(2) Interferes with or obstructs the state department or the state department's designated agent in the performance of duties under this chapter.

(e) The state department may issue an order of compliance against a person described in subsection (d) under IC 4-21.5-3-6, IC 4-21.5-3-8, or IC 4-21.5-4. The state department may impose a civil penalty against a person described in subsection (d) only in a proceeding under IC 4-21.5-3-8.

(f) A proceeding commenced to impose a civil penalty under the schedule of civil penalties established under this section may be consolidated with any other proceeding commenced to enforce either of the following:

(1) This chapter.

(2) A rule adopted by the state department to implement this chapter.

(g) A corporation or a local health department:

(1) may bring an administrative action to enforce this chapter, rules adopted to implement this chapter, or the schedule of civil penalties established by the state department under this section;

(2) may use tickets or citations to enforce this chapter, rules adopted under this chapter, or the schedule of civil penalties established by the state department under this section; and

(3) shall deposit in the general fund of the corporation or the local health department the civil penalties collected under this section.

(h) For each violation of the state law or rules concerning food handling or food establishments, the state or either:

(1) a corporation; or

(2) a local health department;

may bring an enforcement action against a food establishment.

As added by P.L.266-2001, SEC.15. Amended by P.L.97-2004, SEC.70.